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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,241	07/31/2000	Maury E. Collett II	CLT-100	3877

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SALIWANCHIK LLOYD & SALIWANCHIK
A PROFESSIONAL ASSOCIATION
2421 N.W. 41ST STREET
SUITE A-1
GAINESVILLE, FL 326066669

EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 04/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/629,241

Applicant(s)

COLLETT, MAURY E.

Examiner

Naschica S Morrison

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 18 January 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This is the second office action for application number 09/629,241, Wiring Clip for Securing Electrical Wiring to a Framing Member, filed on July 31, 2000. Claims 1-16 are pending.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-16 are treated as if applicant's intent is to claim merely the subcombination of the wiring clip and not the wiring clip in combination with the framing member, wiring, electrical wiring, covering material, two-by-four metal framing member and/or covering fastening screws. The framing member, wiring, electrical wiring, covering material, two-by-four metal framing member two-by-four metal framing member and covering fastening screws are considered functionally recited. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the subcombination and claims 1-16 will be rejected accordingly.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,508,730 to Knezo, Jr. Knezo, Jr. discloses a wiring clip 41 (note Fig. 9) including the following: a main body 42; a wire receiving area adjacent the main body (the space located under 42); and, first and second arms 43 each with respective first and second attachment means for attaching 45 located at first and second ends respectively (located at opposite sides of the longitudinal axis of 42). Knezo, Jr. further

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discloses a substantially resilient, rubber wire compression member 49 located within the wire receiving area. See also Knezo, Jr. column 5, lines 71-72, column 6, lines 10-20. Knezo, Jr. discloses that the first and second attachment means has a J-hook and a bend respectively. Finally, Knezo, Jr., discloses a method for securing including the steps of positioning wiring, moving the clip over the wiring, and attaching the clip. See also Knezo, Jr. column 6, lines 47-54.

Claims 1, 5-10 and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,631,809 to Jacobson. Jacobson discloses a wiring clip 5 (note attached marked-up copy of Figs. 1-2) including the following: a main body 5,5a,6,6a,7,7a; a wire receiving area A1 adjacent the main body; and, first and second arms 14a,12a each with respective first and second attachment means for attaching 14,12 located at first and second ends respectively. Jacobson also discloses that the first and second attachment means has a J-hook and a bend respectively. Finally, Jacobson disclose that the clip is dimensioned and made of thin metal or plastic for allowing a screw to penetrate the clip.

Claims 1,8,10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,778,537 to Miller. Miller discloses a plastic wiring clip (note Figs. 1 and 4) including the following: a main body (includes 34, 14 and 36); a wire receiving area adjacent the main body 30; and first and second arms 12 each with respective first and second attachment means for attaching 28 located at first and second ends respectively (located at opposite sides of the dashed line in Fig. 1). Miller also discloses that the wiring receiving area has a means for closing that is a snap mechanism.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knezo, Jr. Knezo, Jr. discloses the invention substantially as claimed and as applied to claims 1-6 above. Knezo, Jr. discloses the step of attaching both attachment means for attaching. However, Knezo, Jr. does not disclose attaching both attachment means at different times. The order of the steps of attaching the first and second attachment means is deemed to be made obvious by the functions of the structure of the combination above.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,885,853 to Reimer. Reimer discloses a wiring clip 18 (Fig. 2A) comprising: a main body (30 generally); a wire receiving area adjacent the main body (see Fig. 2B); and first and second arms 26 each with respective first and second attachment means for attaching 32 located at first and second ends respectively (located at opposite sides of 26). Reimer also discloses a method for securing including the steps of positioning wiring, moving the clip over the wiring, and attaching the clip (col. 3, lines 14 ff.). Reimer does not disclose attaching both attachment means at different times or attaching the wire to the clip and then to the post (20). However the order of the steps of attaching the first and second attachment means and the order of

the steps of attaching the wire and the clip to the post are deemed to be made obvious by the functions of the structure of the combination above.

Claims 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reimer in view of U.S. Patent 6,315,261 to Snyder. Reimer discloses the invention substantially as claimed and as applied to claims 14 and 15 above, but does not disclose the step of securing the clip to the post with a secondary attachment means comprising a screw. However, Snyder teaches the method of attaching a clip (10) to a post (11) including the step of providing a screw (10b) for securing the clip. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modified the clip of Reimer by providing a secondary attachment means comprising a screw because one would have been motivated to provide a means for permanently attaching the clip to the support as inherently taught by Snyder.

Response to Arguments

Applicant's arguments with respect to the rejection of claim 12 in view of Miller have been fully considered and are persuasive.

Applicant's arguments with respect to claims 14 and 15 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 1/18/02 have been fully considered but they are not persuasive. In response to applicant's argument that "Knezo, Jr. does not teach a wiring clip which attaches to the sides of a metal framing member", "Jacobson patent is not for securing wiring to a metal framing member", and "the boom 18 disclosed in the

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Miller reference is not a metal framing member", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Regarding applicant's argument of Jacobson that "one skilled in the art... would need to thread wiring through hole 15", examiner respectfully disagrees. One skilled in the art would be able to locate wiring within A1 (see marked up copy attached) such that it extends longitudinally along the bar 9.

Regarding applicant's argument that "the Miller clip would not secure wiring positioned within second clamp portion 30.... the wiring needs a cylindrically shaped surrounding the wiring", examiner respectfully disagrees. The clamp portion 30 of Miller is fully capable of supporting various cylindrical objects especially a cylindrical wire or wire bundle.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a closeable wire receiving area) are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:


1772687 to Reinke; 3122604 to Cook et al; 3191281 to Cobaugh;
3528636 to Schmidt; 4259767 to Holton; 4807417 to Bell

The above patents disclose various types of mounting clips.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 305-3598 (formal amendments) or (703) 308-3686 (informal amendment/communication).

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 308-2168.


Naschica S. Morrison
Patent Examiner
Art Unit 3632
4/6/02


LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER

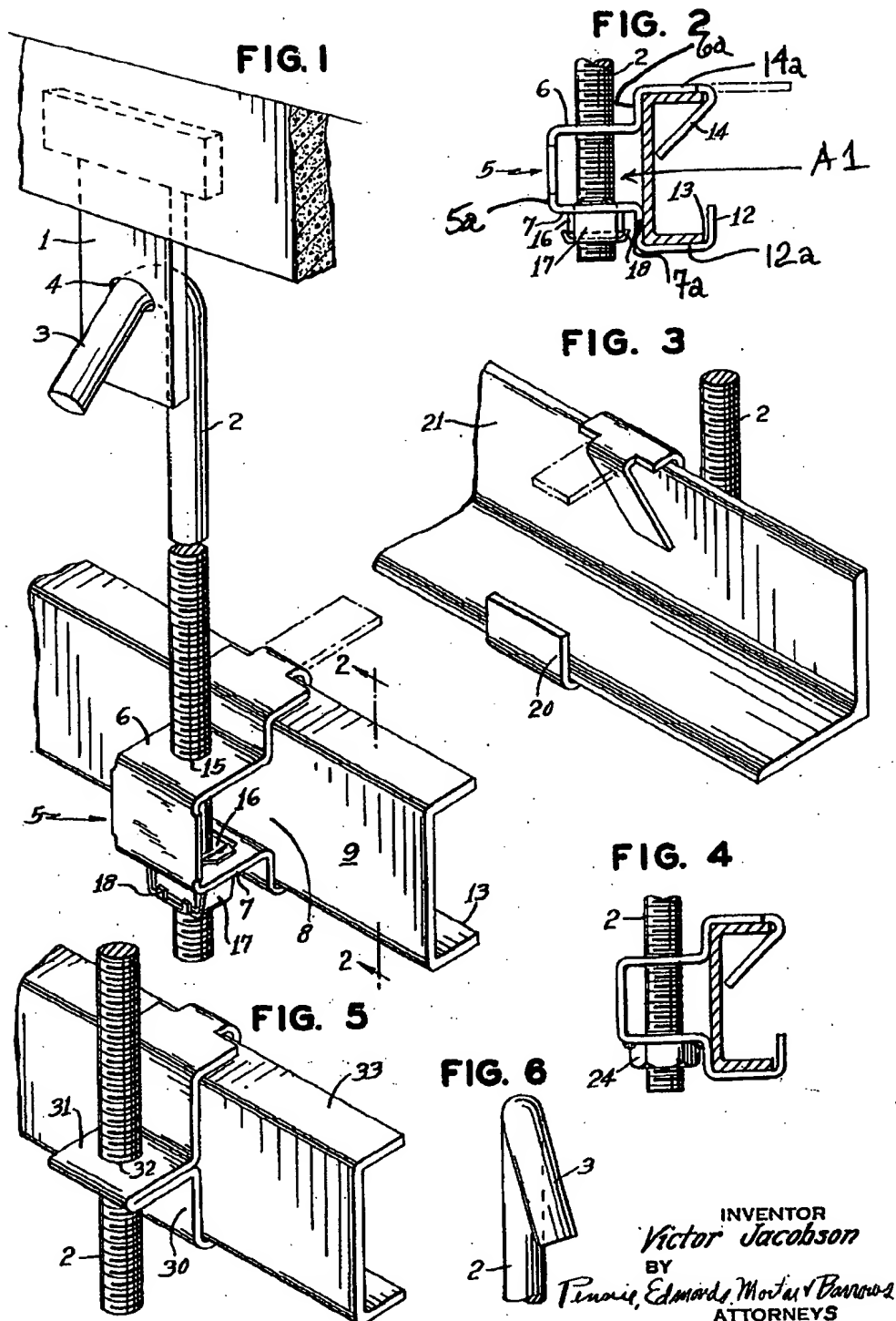
March 17, 1953

V. JACOBSON

2,631,809

FURRING HANGER

Filed Sept. 30, 1950



INVENTOR
Victor Jacobson
 BY
Pinard, Edwards, Morten & Barron
 ATTORNEYS

Notice Regarding Treatment of Irradiated Correspondence

The following papers have not been made part of the permanent records of the United States Patent and Trademark Office (Office) for this application (37 CFR 1.52(a)) because of damage from the United States Postal Service irradiation process:

Mailroom Stamp Date

Certificate of Mailing Date

___2/4/02___

___1/2/02___

The above-identified papers, however, were not so damaged as to preclude the USPTO from making a legible copy of such papers. Therefore, the Office has made a copy of these papers, substituted them for the originals in the file, and stamped that copy:

COPY OF PAPERS ORIGINALLY FILED

If applicant wants to review the accuracy of the Office's copy of such papers, applicant may either inspect the application (37 CFR 1.14(d)) or may request a copy of the Office's records of such papers (*i.e.*, a copy of the copy made by the Office) from the Office of Public Records for the fee specified in 37 CFR 1.19(b)(4). Please do **not** call the Technology Center's Customer Service Center to inquiry about the completeness or accuracy of Office's copy of the above-identified papers, as the Technology Center's Customer Service Center will **not** be able to provide this service.

If applicant does not consider the Office's copy of such papers to be accurate, applicant must provide a copy of the above-identified papers (except for any U.S. or foreign patent documents submitted with the above-identified papers) with a statement that such copy is a complete and accurate copy of the originally submitted documents. If applicant provides such a copy of the above-identified papers and statement within **THREE MONTHS** of the mail date of this Office action, the Office will add the original mailroom date and use the copy provided by applicant as the permanent Office record of the above-identified papers in place of the copy made by the Office. Otherwise, the Office's copy will be used as the permanent Office record of the above-identified papers (*i.e.*, the Office will use the copy of the above-identified papers made by the Office for examination and all other purposes). This three-month period is not extendable.